

The office action states that:

The purchase of a first item relates to the price of the first item.  
[Page 2, line 18.]

That assertion is apparently in reference to the column 69 lines 14-33 recitation in the '322 Deaton et al. patent. Column 69 lines 14-33 in the '322 Deaton et al. patent does not disclose that the "purchase of a first item relates to the price of the first item." Moreover, that assertion makes no sense.

The office action admits that:

Deaton et al. does not explicitly teach selecting incentive data based on the price of a second item. [Page 2 lines 18-19.]

The office action attempts to overcome the short falling of the Deaton et al. patent, alleging that:

Deaton et al. teaches providing incentive data based on a dollar amount and the number and type of items purchased. Note column 69, lines 35-46 and column 101, lines 39-55. It would have been also obvious to one of ordinary skill in the art at the time the invention was made to also select incentives based on the price of a second item in order to allow the customer loyalty on purchasing a specific type of product as suggested by Deaton et al. [Office action page 2 lines 19-24.]

Both the asserted facts and the legal conclusions in the foregoing quotation are incorrect.

The passage at column 69 lines 35-61 in the '322 Deaton et al. patent do not disclose selecting incentive data based on the number and type of items purchased.

The passage at column 101 lines 39-55 in the '322 Deaton et al. patent do not disclose providing incentive data based on the number and type of items purchased.

Neither the passage at column 69 lines 35-46 nor the passage at column 101 lines 39-59 in the '322 Deaton et al. patent disclose depending an incentive on the price of a first item and the price of a second item, as defined by independent claim 10.

The '322 Deaton et al. patent provides no teaching suggesting selecting incentive data based upon the price of a first item and the price of a second item in response to purchase of the first item. Claim 10 recites a means for selecting incentive data "depending upon (1) purchase of a first item, (2) a price of said first item, and (3) a price for a second item." Since the '322 Deaton et al. patent does not disclose or suggest selecting incentive data based upon the three criteria recited in claim 10, it does not anticipate or suggest claim 10.

The office action asserts that it would have been obvious to "select incentives based upon the price of a second item in order to allow customer loyalty on purchasing a specific type of product." Those conclusions do not follow from the stated facts. The office action does not identify teachings in the '322 Deaton et al. patent relating to customer loyalty. The office action does not explain why selecting incentives based upon the price of a second item would have "allow[ed] customer loyalty." Assuming that selecting incentives based upon the price of a second item would have "allow[ed] customer loyalty," the office action does not contain any assertion that one of ordinary skill in the art would have recognized that alleged fact.

The office action states that:

As for claim 15, selecting incentive data based upon a difference in price between the first and the second item would have been obvious to the skilled artisan because Deaton et al. teaches providing incentive data based on dollar volumes.  
[Page 3 lines 11-13.]

In reply, the applicants point out that the '322 Deaton et al. patent teaches generation of coupons "based upon dollar purchases by customer[s]." Column 101 lines 40-41. The '322 Deaton et al. patent does not disclose selecting incentive data based on a difference in price between a first item and a second item, as defined by claim 15. Moreover, the conclusion in the office action that a teaching of providing incentive data based upon dollar

volumes suggests selecting incentive data based upon a difference in price between a first item and a second item is a non sequitor. Accordingly, there is no evidence supporting the rejection of claim 15.

The office action states that:

As per claim 16, Deaton et al. also discusses providing incentives in which purchased items are competitive items. Note column 69, lines 25-30. [Page 3 lines 16-17.]

In reply, the applicants point out that column 69 lines 25-30 do not disclose "providing incentives in which purchased items are competitive items." Instead, that passage reads:

In the disclosures of the above-captioned two patents, a coupon relating to a particular type of a product is generated based upon a bar code reader determining that a triggering or competitive product has just been purchased by the consumer.

Hence, the '322 Deaton et al. patent does not disclose that the "purchased items are competitive items." Moreover, that passage is not relevant to the subject matter defined by claim 16.

The office action asserts that claims 17-23 are obvious for the same reasons applicable to claims 10-16. In reply, the applicants note that claims 17-23 are nonobvious for the reasons presented above with respect to claims 10-16.

The office action fails to address independent claim 24. Accordingly, that claim is presumed to be in condition for allowance.